IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.18 OF 2002

Sanjay @ Narayan Kasar,
S/o Gajanan Kasar,
R/o Gaonkarwado,
Bicholim, Goa ... APPLICANT

VERSUS

State ... RESPONDENT

Mr. S.D. Lotlikar, Senior Advocate, with Ms. S. Samant, Advocate, for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor, for the Respondent State.

CORAM : D.G. DESHPANDE,J.

DATED : FEBRUARY 6, 2003.

ORAL JUDGMENT

The Accused/Applicant was prosecuted under Sections 279, 304-A and Section 337 of the Indian Penal Code. He was sentenced to pay fine of Rs.1,000/- or in default, 30 days simple imprisonment for offence under Section 279 I.P.C.; he was sentenced to suffer imprisonment for one year and fine of Rs.2,000 or in default further imprisonment of 30 days for offence under Section 304-A of I.P.C. and for offence under Section 337 I.P.C. he was sentenced to pay fine of Rs.500/- or in default 30 days simple imprisonment. He preferred appeal against the said Order of the

Judicial Magistrate, First Class, Bicholim to the Sessions Court vide his Appeal No.68 of 2001. The Appeal came to be dismissed by the Additional Sessions Judge on 11-7-2002 and hence this Revision.

2. The case of the prosecution was that on 19-10-1998 at about 5.00 a.m. at Madel, Tivim, the accused was driving Tata Sumo Jeep bearing No.GA-01-B-5854, in a rash and negligent manner on the public road leading from Mapusa to Bicholim and dashed against a crowd which had gathered on the road for burning the effigy of Narkasur. Two boys sustained injuries in the accident and died and eight more boys also sustained injuries on account of rash and negligent driving.

3. The defence of the accused was that a number of boys had gathered by the side of the road for burning the effigy of Narkasur. When he was driving the car and reached the place of accident some boys suddenly came on the middle of the road and then turned back resulting in their dashing against his vehicle.

4. The prosecution examined eight witnesses in support of its case and the accused one Arunkumar Ande in his defence. The defence of the

accused was rejected and the case of the prosecution was accepted by the trial Court as well as by the appellate Court. Hence this Revision.

5. Counsel for the accused contended that even from the sketch map under panchanama it could not be said that the accused was driving the car rashly and negligently. According to him, in the panchanama Exhibit P.W.1/A colly, there is some alteration of distance of brake marks and benefit of this alteration should be given to the accused. Further, according to him, even from the sketch map which forms part of the panchanama it will be clear that the accused was driving the car from the left side. He contended that the noting of the brake marks upto a distance of 24 metres from the point of dash till the point the jeep stopped is wrong and there were no brake marks to such a length. He further contended that looking to the fact that the crowd had already gathered and it was time of early morning when the accident took place, the defence of the accused was liable to be accepted. He also contended that though the prosecution has examined number of witnesses, their evidence was almost parrot-like and their estimation that the jeep was being driven at a speed of 70 Kms. per hour could not be made basis for coming to the conclusion that

the accused was driving the jeep rashly and negligently. For all these reasons, he contended that the judgments of both the Courts below are liable to be set aside.

6. The learned Public Prosecutor, however, contended that since this is a Revision, the scope was limited and unless the accused was successful in showing that the judgments of both the Courts below were perverse, the same could not be interfered with. So far as merits are concerned, the learned Public Prosecutor contended that the very fact that two persons died and eight persons were injured because of the dash given by the accused itself proves that the accused was driving the car rashly and negligently and no more proof was necessary. Regarding the sketch map, the learned Public Prosecutor contended that the sketch map will show so also the evidence of witnesses, that the effigy of Narkasur was being burnt on the katcha road which is by the side of the tarred road and, therefore, the entire road was vacant and there was no reason for the accused to dash the persons standing on the katcha road. He also contended that even if there is some correction in the panchanama regarding the distance of the brake marks, no benefit could be given to the accused because there was no

cross-examination either of the pancha or the eye witnesses nor the I.O. was questioned about this correction. So far as the eye witnesses are concerned, the learned Public Prosecutor contended that all of them were victims of the accident and their evidence was bound to be consistent, and it could not be said that their version was parrot-like. He, therefore, urged that the Appeal be dismissed as there was no merit.

7. It is a fact on record that the incident took place in the early hours of the morning. It is also a fact that in all, ten persons were injured out of which two persons died because of the accident and the dash given. P.W.3 who is an eye witness has stated about this aspect and has stated that two injured boys by name Mohan Arolkar and Mahesh Gadekar received injuries and died. One boy Tushar Salgaonkar was seriously injured and was still handicapped. He himself P.W.3 received injuries and besides all this, there were seven more boys who sustained injuries because of the dash given by the jeep. P.W.4 is Prakash Gawas who received injuries in the accident on the head and became unconscious. P.W.5 Surya Palni also received injuries on his right shoulder. P.W.6 also received injuries because he was thrown on the ground as a

result of the dash given by the vehicle of the accused. Same is the case with P.W.7 who was also a victim of the accident.

8. When the jeep of the accused dashed eleven persons and there is nothing in the cross-examination of these witnesses to show that the two boys died because they rushed on the road and they turned back after coming of the jeep of the accused and this resulted in the accident, then both the Courts below were perfectly justified in accepting the case of the prosecution fully and convicting the accused.

9. The sketch map and the panchanama fully corroborate and support the case of the prosecution. The panchanama was drawn immediately so also the sketch map and the pancha P.W.1 has stated on oath that he observed brake marks for about 22 metres from the rear side of the jeep. In the panchanama, it is stated that the brake marks were 24 metres behind the jeep. If the length of the jeep is 2 metres, then the evidence of the pancha fully and completely corroborates the panchanama. The very fact that the jeep had to stop from the point of dash upto a place of 22 or 24 metres, will show that the jeep was being driven rashly and negligently.

It is not the defence of the accused that there was any mechanical failure with the jeep which could be the cause of the accident. No such defence is raised nor any suggestions are put.

10. It was tried to be urged that the breaking of the glass of the jeep and bent in the left side guard of the Tata Sumo jeep was as a result of the stones pelted on the jeep. But this is also not supported by the evidence.

11. The case of the prosecution was put to the accused in his Statement under Section 313 Cr.P.C. and the accused has tried to explain that some boys suddenly came on the middle of the road and again turned back and this resulted in the accident. The accused examined one witness in his defence as A.W.1. This witness has stated that he came to know about the accident involving the vehicle of the accused in the newspaper a day after the accident. He has further stated that he had gone from Bicholim to Mapusa to watch the competition of Narkasur. He reached Mapusa at 12 o'clock midnight. The programme got over at 2.30 a.m.. One Gurudas Kerikar was with him and they had gone on scooter. At 4 o'clock they left Khorlim and came to Bicholim and when they reached Tivim, about

2 kilometres from Mapusa, they saw large number of persons on the road and they stopped their scooter and started asking for donation, but as they replied that they had no money, they were allowed to go ahead. The evidence of this witness does not at all help the accused in any manner whatsoever. Firstly, he is not an eye witness to the accident. Secondly, he does not know how the accident occurred and how ten or eleven boys were injured, two out of whom died. He has only stated about the donation being asked by the persons gathered on the spot sometime before this accident. But that does not lead the case of the accused anywhere at all.

12. So far as death of two boys is concerned, Exhibit P.W.8/C colly shows that the injuries could be caused by motor vehicle accident.

13. This is, therefore, a case where there are five eye witnesses to the incident.All of them are victims of the accident. Their cross-examination has not at all been fruitful nor beneficial to the accused and their evidence is fully corroborated by the panchanama and the sketch map and the medical evidence. Both the Courts below, therefore, rightly convicted the accused. No interference is called for.

14. Alternatively, Advocate for the accused contended that the sentence of one year imprisonment should be reduced looking to the age of the accused. However, looking to two deaths and eight injured, no reduction of sentence can be granted.

15. Hence the Revision is dismissed. The bail bond of the Applicant is cancelled. He has to surrender within four weeks in the trial Court.

D.G. DESHPANDE,J.

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